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FISCAL IMPACT STATEMENT

LS 6912

BILL NUMBER: HB 1308

NOTE PREPARED: Jan 1, 2007

BILL AMENDED:

SUBJECT: Local Review of Confined Feeding Operations.

FIRST AUTHOR: Rep. Cheatham

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill allows the Department of Environmental Management (IDEM) to approve the construction after December 31, 2008, of a confined feeding operation only if the construction has been approved by the local health department and the local zoning authority. The bill establishes the procedure for local approval, including an appeal to the county executive of an approval or denial. The bill provides for administrative guidance and rulemaking.

Effective Date: July 1, 2007.

Explanation of State Expenditures: There would be no reduction in expenditures for IDEM. IDEM travels to appear before local governments considering applications for confined feeding operations on a semi-regular basis as part of the permit program – even when no permit is under consideration. The bill also provides that IDEM must provide the application form which could result in a minimal increase in administrative expenses. There may be up to a 1% increase in costs associated with reviewing the permit application. Assuming IDEM reviews 100 items on the application, this additional requirement would add a small, relatively insignificant cost.

The bill also provides that the Water Pollution Control Board may adopt rules and IDEM may adopt policies or statements that concern construction and operation of confined feeding operations that include guidance for determinations required at the local level. IDEM should be able to adopt rules and standards given its existing resources and budget.

Explanation of State Revenues:

Explanation of Local Expenditures: *Summary:* The bill has several provisions which will increase expenses for counties. The specific increase is indeterminable and will depend on the number and nature of applications and objections received at the local level.

Background: The bill provides that a person may not start construction of a confined feeding operation after December 31, 2008, without obtaining the prior approval of:

- (1) the local health department or health and hospital corporation that has jurisdiction where the operation is to be located;
- (2) the local zoning authority that has jurisdiction where the operation is to be located, or the county executive if the operation is to be located in a county that does not zone; and
- (3) the IDEM.

Under existing law, the entities to which applications are submitted must publish notice of a joint public hearing on the applications. The proposal provides that after the public hearing and any inquiry or investigation, each of the entities must make a separate written determination either approving or denying the application. The entity must give notice of the determination to the applicant and IDEM.

If an application is denied by an entity other than the county executive, the applicant may appeal the denial by filing an objection petition with the county executive. If an applicant files an objection petition with a county executive, the county executive must publish notice of a public hearing on the application denial and hold a public hearing and conduct any inquiry or investigation necessary. A county executive may overturn the denial of an application if the county executive determines that the construction and operation of the proposed confined feeding operation are consistent with the public health, safety, and welfare.

After the public hearing and investigation, the county executive must make a written determination on the objection petition and give notice of the determination to the applicant and IDEM.

If the local health department or health and hospital corporation and the local zoning authority have denied the application and the applicant appeals, the county executive may consolidate the public hearings.

Ten or more residents of the county may object to the approval of the facility by filing an objection petition with the county executive. If an objection is filed with a county executive, the county executive must publish notice of a public hearing on the application approval to which the objection petition relates. The county executive may uphold the application approval to which an objection petition relates only if the county executive determines that the construction and operation of the proposed confined feeding operation are consistent with the public health, safety, and welfare.

After the public hearing, the county executive must make a written determination on the objection petition and give notice of the determination to the applicant, to the first 10 residents whose names appear on the objection petition, and to IDEM.

A CFO is a confined feeding operation that maintains for a minimum of 45 days at least 300 cattle, 600 sheep, 600 swine, or 30,000 fowl. Additionally, a feeding operation is considered a CFO if it violates water pollution control laws or Water Pollution Control Board rules. Approximately 2,210 regulated farms have an IDEM confined feeding approval permit to conduct business.

State Rules Regarding CFOs - IDEM regulates CFOs in part on the distance or "setback" a proposed

CFO's manure application would be from a water source. The maximum water setback under current rule is 500 feet.

County Ordinances- County ordinances concern the compatibility of a CFO with other property. Reviewed ordinances of three counties indicate that CFOs maintaining manure waste must operate at a minimum distance of approximately 1,300 feet from adjacent residential property lines. If a county has an ordinance regulating land use, generally an applicant for a startup feeding operation will seek approval through the county planning or zoning board before applying to IDEM for a permit to operate as a CFO.

Local Fees and Fines- At least one county collects a filing fee (plus public notification costs) when an applicant appeals to the zoning board for a special exemption to operate a CFO. Another county's animal waste ordinance allows for civil penalties to be assessed on violators.

Explanation of Local Revenues:

State Agencies Affected: IDEM.

Local Agencies Affected: Counties; Local health department or health and hospital corporations; Local zoning authorities.

Information Sources: Amy Butcher, Executive Director, Shelby County Plan Commission, 317-392-6338; William MacDaniel, Fayette County Area Plan Commission, 765-825-9808; David Neuman, Decatur County Area Plan Commission, 317-232-2554; Bowden Quinn and Sandra Flum, IDEM, 233-3835; www.indianaeconomicdigest.net.

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